

orthopedic surgeon. At the time of the preliminary hearing, claimant had not returned to work for respondent but was working part time as a bus driver.

It is not entirely clear whether respondent denies claimant had any injury arising out of and in the course of employment or only denies that it occurred after April 1, 1999, when the current insurance carrier assumed coverage. The distinction is significant because the latter argument does not raise a jurisdictional question and is, therefore, not subject to review at this stage. *Carpenter v. National Filter Service*, Docket No. 81,106 (Kan. App. 1999).

If the respondent is arguing claimant had not suffered accidental injury arising out of and in the course of employment, this issue is a jurisdictional issue and is subject to review. K.S.A. 44-534a. The Board finds the evidence does establish claimant suffered accidental injury arising out of and in the course of employment through August 2, 1999. This conclusion is supported by claimant's testimony and the report from Dr. Sergio Delgado. Dr. Delgado stated in his report of October 27, 1999:

It is my conclusion that his injury of August 2, 1999, is a continuum of his symptoms which were record [sic] starting on March 15, 1999, and can be considered to be an aggravation of a condition related to the job duties performed until August 2, 1999.

Finally, respondent contends any aggravation through August 2, 1999, should be attributed to March 15, 1999, because claimant violated restrictions and, in fact, did not inform respondent of restrictions. Claimant disputes this contention. While respondent's insurance carrier might, if this contention is correct, find it frustrating to be obligated for an injury that might have been avoided, the Board does not consider this argument relevant, in what is generally a no-fault system, to either whether or when claimant suffered injury.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order entered by Administrative Law Judge Brad E. Avery on December 30, 1999, should be, and the same is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of February 2000.

BOARD MEMBER

c: Beth Regier Foerster, Topeka, KS
Eric T. Lanham, Kansas City, KS
Brad E. Avery, Administrative Law Judge
Philip S. Harness, Director